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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,829	11/24/2003	Michael Barth Venturino	KCX-669 (19587)	4748
22827 7590 10/17/2007 DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			EXAMINER HAND, MELANIE JO	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 10/17/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/721,829

Applicant(s)

VENTURINO ET AL.

Examiner

Melanie J. Hand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6 and 12-33 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6,12-20,22-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments, see Remarks, filed July 13, 2007, with respect to the rejection(s) of claim(s) 1, 3-6, 12-16 and 21-33 under 35 U.S.C. 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

### *Claim Rejections - 35 USC § 102*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-6, 12-20, 22, 23 and 26-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Mesek (U.S. Patent No. 4,670,011).

With respect to **claim 1**: Mesek teaches an absorbent article 10 comprising: an outer cover material 16; a liner 12; and an absorbent structure 14 positioned between the outer cover material 16 and the liner 12, the absorbent structure 14 including a front portion, a rear portion, and a middle portion, the front portion having a width, the absorbent structure 14 further comprising a pair of opposing lateral flaps 26 folded at least onto the middle portion defined by central portion 28 of the absorbent structure, each of the flaps 26, when in an unfolded state, extending beyond the width of the front portion. As can be seen from Fig. 4, each of the flaps 26 has a width adjacent to the middle portion that is necessarily from about 25% to 100% of the width of the middle portion, since each flap 26 when folded completely covers either a second flap 26 or the middle portion 28 and said flaps 26 have an outer edge that coterminates with the

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side edges of the middle portion 28. (Col. 7, lines 24-47)

With respect to **claim 3**: The middle portion is narrower than the front portion and the back portion. (Fig. 2)

With respect to **claim 4**: As can be seen from Fig. 4, each of the flaps 26 has a width adjacent to the middle portion that is necessarily from about 33% to 100% of the width of the middle portion, since the flaps have an outer edge that coterminates with the side edges of the middle portion 28 and each flap when folded either completely covers a second flap 26 or the middle portion 28. (Fig. 4) Thus each flap has a width that is about 100% of the width of the central portion 28, i.e. the said middle portion.

With respect to **claim 5**: Each of the flaps completely covers either a second flap or the middle portion 28 of the core as can be seen in Fig. 4, thus each flap has a width adjacent to the middle portion that is from about 50% to 100% of the width of the middle portion.

With respect to **claim 6**: As can be seen in Fig. 2, the absorbent structure 14 has an hourglass-like shape.

With respect to **claim 12**: The lateral flaps 26 are connected to the middle portion and wherein each of the flaps 26 is separated from the front portion by a first slit in the form of cutting line 30 and separated from the rear portion by a second slit in the form of a second cutting line 30.

With respect to **claim 13**: The absorbent structure 14 defines a longitudinal axis that extends

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from the front portion to the rear portion, the first slits 30 and the second slits 30 being substantially perpendicular to the longitudinal axis. (Fig. 2)

With respect to **claim 14**: The absorbent structure 14 defines a longitudinal axis that extends from the front portion to the rear portion, the first slits 30 and the second slits 30 extending generally in a diagonal direction in relation to the longitudinal axis.

With respect to **claim 15**: The absorbent structure 14 necessarily has a generally uniform basis weight when in an unfolded state, as the flaps 26 are constructed from the same material as the remainder of core 14. (Col. 7, lines 25-38, Col. 8, lines 20-22)

With respect to **claim 16**: The absorbent structure 14 defines a longitudinal axis that extends from the front portion to the rear portion, the first slits 30 and the second slits 30 being curved and thus extending in a non-linear fashion in relation to the longitudinal axis. (Col. 7, line 41)

With respect to **claim 21**: The absorbent article 10 is a diaper. (Col. 7, line 5)

With respect to **claim 22**: The absorbent structure 114, a second embodiment of structure 14, comprises superabsorbent particles. (Col. 10, lines 26-33)

With respect to **claim 23**: The absorbent structure 14 comprises pulp fibers and superabsorbent particles. (Col. 8, lines 20-22, Col. 10, lines 26-33)

With respect to **claim 26**: Once each of the lateral flaps 26 have been folded, the middle portion

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necessarily includes areas that have a basis weight that is at least twice the basis weight of the front portion and the rear portion, since the front portion and rear portion of structure 14 are of uniform thickness and material with the remainder of structure 14, namely the central portion 28 and each flap 26.

With respect to **claim 27**: Once each of the lateral flaps 26 have been folded, the middle portion includes areas that have a basis weight that are at least twice that of the front and rear portions, i.e. at least 100% greater, which overlaps the range of an area having a basis at least 150% greater than the basis weight of the front portion and the rear portion once said flaps 26 have been folded.

With respect to **claim 28**: Once each of the lateral flaps have been folded, the middle portion includes areas that have a basis weight that is at least twice the basis weight of the front portion and the rear portion, i.e. 100% greater, which overlaps the range of an area having a basis weight at least three times the basis weight of the front portion and the rear portion once said flaps 26 have been folded.

With respect to **claim 29**: The front portion includes a center area and two opposing lateral areas and the rear portion also includes a center area and two opposing lateral areas, as can be seen in Fig. 2. Once each of the lateral flaps 26 have been folded, the middle portion 28, the center area of the front portion, and the center area of the rear portion necessarily each have a basis weight that is at least 150% greater than the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion, since the basis weight of the two opposing lateral areas and the front portion is uniform with respect to the basis

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weight of the center area of the front portion and the middle portion prior to folding.

With respect to **claim 30**: The front portion includes a center area and two opposing lateral areas and the rear portion also includes a center area and two opposing lateral areas, and wherein, once each of the lateral flaps 26 have been folded, the middle portion 28, the center area of the front portion, and the center area of the rear portion each have a basis weight that is necessarily at least twice the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion, since the outer edge of each flap 26 is coterminal with the edges of the medial portion 28, and the flaps 26 and medial portion 28 have a uniform basis weight prior to folding. (Figs. 2,4)

With respect to **claim 31**: Once each of the lateral flaps 26 have been folded, the middle portion has a basis weight that is necessarily at least three times the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion, and the center area of the front portion and the center area of the rear portion have a basis weight that is at least twice the basis weight of the two opposing lateral areas of the front portion and the two opposing lateral areas of the rear portion, since the outer edge of each flap 26 is coterminal with the edges of the medial portion 28, and the flaps 26, medial portion 28 and the central area of said front portion of absorbent structure 24 have a uniform basis weight prior to folding. (Figs. 2,4)

With respect to **claim 32**: Once each of the lateral flaps 26 have been folded, the middle portion 28 comprises two layers of material. (Fig. 4)

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With respect to **claim 33**: Once each of the lateral flaps 26 have been folded, the middle portion comprises three layers of material. (Fig. 4)

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 24 and 25 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mesek ('011).

With respect to **claim 24**: The limitation "the absorbent structure 14 comprises an air formed web" constitutes product-by process claim language that does not render the claimed invention patentable over the article of Mesek. When the structure or composition recited in the reference is substantially identical to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except for a property or function (in the present case, a structure that comprises an air-formed web) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

With respect to **claim 25**: The absorbent structure 14 of Mesek meets all of the limitations of claim 25. With regard to the limitation of "has a basis weight of from about 100 gsm to about 2,000 gsm", when the structure or composition recited in the reference is substantially identical



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to that of the claims of the instant invention, claimed properties or functions presumed to be inherent (MPEP 2112-2112.01). A prima facie case of either anticipation or obviousness has been established when the reference discloses all the limitations of a claim except for a property or function (in the present case, a particular range of basis weights) and the examiner can not determine whether or not the reference inherently possesses properties that anticipate or render obvious the claimed invention but has a basis for shifting the burden of proof to applicant, as per *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner

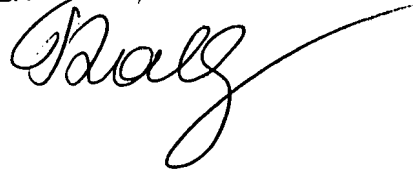
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October 9, 2007

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Tatyana', with a long, sweeping horizontal line extending to the right.